

# ASSEMBLY, No. 372

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

The “Health Care Provider Network Transparency Act”; establishes requirements for granting access to certain health care provider discounts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning certain health care provider networks, and  
2 supplementing chapter 30 of Title 17B of the New Jersey  
3 Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. This act shall be known and may be cited as the “Health  
9 Care Provider Network Transparency Act.”

10  
11 2. As used in this act:

12 “Contracting entity” means any person or entity that enters into  
13 direct contracts with providers for the delivery of health care  
14 services in the ordinary course of business.

15 “Covered person” means an individual who is covered under a  
16 health insurance plan.

17 “Discount medical plan organization” means an entity that, in  
18 exchange for fees, dues, charges or other consideration, provides to  
19 its members access to providers of medical services and the right to  
20 receive medical services from those providers at a discount.

21 “Electronic claims transport” means accepting and digitizing  
22 claims already digitized, placing those claims into a format that  
23 complies with the electronic transaction standards issued by the  
24 United States Department of Health and Human Services under  
25 subtitle F of title II of the federal “Health Insurance Portability and  
26 Accountability Act of 1996,” Pub.L.104-191 (42 U.S.C. s. 1320d et  
27 seq.) as those electronic standards are applicable to the parties, and  
28 electronically transmitting those claims to the appropriate  
29 contracting entity, payer, or third party administrator.

30 “Health care services” means services for the diagnosis,  
31 prevention, treatment, or cure of a health condition, illness, injury,  
32 or disease.

33 “Health insurance plan” means any hospital and medical expense  
34 incurred policy, health maintenance organization subscriber  
35 contract, or any other health care plan or arrangement that pays for  
36 or furnishes medical or health care services, whether by insurance  
37 or otherwise. “Health insurance plan” shall not include one or  
38 more, or any combination of, the following: coverage only for  
39 accident, or disability income insurance; coverage issued as a  
40 supplement to liability insurance; liability insurance, including  
41 general liability insurance and private passenger automobile  
42 insurance; workers’ compensation or similar insurance; automobile  
43 medical payment insurance; credit-only insurance; coverage for on-  
44 site medical clinics; coverage similar to the foregoing as specified  
45 in federal regulations issued pursuant to the federal “Health  
46 Insurance Portability and Accountability Act of 1996,” P.L.104-191  
47 (29 U.S.C. s.1181 et al.), under which benefits for medical care are  
48 secondary or incidental to other insurance benefits; dental or vision

1 benefits; benefits for long-term care, nursing home care, home  
2 health care, or community-based care; specified disease or illness  
3 coverage, hospital indemnity or other fixed indemnity insurance, or  
4 such other similar, limited benefits as are specified in regulations;  
5 Medicare supplemental health insurance as defined under section  
6 1882(g)(1) of the federal Social Security Act Pub.L.74-271 (42  
7 U.S.C. s.1395ss(g)(1)); coverage supplemental to the coverage  
8 provided under chapter 55 of title 10, United States Code (10  
9 U.S.C. s.1071 et seq.); or other similar limited benefit supplemental  
10 coverages.

11 “Payer” means a carrier, organized delivery system, or any other  
12 person who undertakes to provide and assumes financial risk for the  
13 payment of health benefits, and is obligated to pay claims for health  
14 benefits on behalf of a covered person to a provider or other  
15 claimant.

16 “Provider” means a physician licensed pursuant to Title 45 of the  
17 Revised Statutes, a physician organization, or a physician hospital  
18 organization that is acting exclusively as an administrator on behalf  
19 of a provider to facilitate the provider’s participation in health care  
20 contracts. “Provider” shall not include a physician organization or  
21 physician hospital organization that leases or rents the physician  
22 organization’s or physician hospital organization’s network to a  
23 third party.

24 “Provider network contract” means a contract between a  
25 contracting entity and a provider specifying the rights and  
26 responsibilities of the contracting entity and providing for the  
27 delivery of and payment for health care services to covered persons.

28 “Third party” means a person or entity that enters into a contract  
29 with a contracting entity or with another third party to gain access  
30 to a provider network contract.

31 “Third party administrator” means “third party administrator” as  
32 defined by section 1 of P.L.2001, c.267 (C.17B:27B-1).

33

34 3. This act shall not apply to:

35 a. A provider network contract for services provided to  
36 beneficiaries of the Medicaid program established pursuant to  
37 P.L.1968, c.413 (C.30:4D-1 et seq.), the Medicare program  
38 established pursuant to the federal Social Security Act, Pub.L.74-  
39 271 (42 U.S.C. s.1395 et seq.), or the NJ FamilyCare Program  
40 established pursuant to P.L.2005, c.156 (C.30:4J-8 et al.);

41 b. Situations in which access to a provider network contract is  
42 granted to an entity operating under the same brand licensee  
43 program as the contracting entity; and

44 c. A contract between a contracting entity and a discount  
45 medical plan organization.

1       4. a. Any person conducting business as a contracting entity in  
2 this State on the effective date of this act shall register with the  
3 Department of Banking and Insurance within 90 days of the  
4 effective date of this act unless the person is licensed by the  
5 department as an insurer. Any person that commences business as a  
6 contracting entity in this State on or after the effective date of the  
7 act shall register with the department within 30 days of  
8 commencing business unless the person is licensed by the  
9 department as an insurer.

10       b. Registration shall consist of the submission to the  
11 department of the following information:

12       (1) the official name of the contracting entity and any other  
13 names under which the contracting entity does business or was  
14 formerly known;

15       (2) the mailing address and main telephone number for the  
16 contracting entity's main headquarters;

17       (3) the name and telephone number of the contracting entity's  
18 representative who serves as the primary contact with the  
19 department; and

20       (4) any other information deemed to be necessary by the  
21 department.

22       c. The information required by this section shall be submitted  
23 in written or electronic format, as prescribed by the department  
24 through regulation.

25       d. The department may collect a reasonable fee for the purpose  
26 of administering the registration process, as prescribed by the  
27 department through regulation.

28

29       5. A contracting entity shall not grant to a third party access to  
30 a provider network contract unless the third party accessing the  
31 provider network contract is:

32       a. A payer or third party administrator or other entity that  
33 administers or processes claims on behalf of the payer;

34       b. A preferred provider organization or preferred provider  
35 network, including a physician organization or physician-hospital  
36 organization; or

37       c. An entity engaged in the business of providing electronic  
38 claims transport between the contracting entity and the payer, that  
39 does not provide access to the provider's health care services and  
40 contractual discounts to any other third party.

41

42       6. A contracting entity shall not grant to a third party access to  
43 a provider's health care services and contractual discounts pursuant  
44 to a provider network contract unless:

45       a. The provider network contract specifically states that the  
46 contracting entity may enter into an agreement with a third party  
47 allowing the third party to obtain the contracting entity's rights and

1 responsibilities under the provider network contract as if the third  
2 party were the contracting entity; and

3 b. The third party accessing the provider network contract is  
4 contractually obligated to comply with all applicable terms,  
5 limitations, and conditions of the provider network contract.

6

7 7. a. A contracting entity that grants to a third party access to a  
8 provider's health care services and contractual discounts pursuant to  
9 a provider network contract shall, at the time a provider network  
10 contract is entered into with a provider:

11 (1) identify and provide to the provider upon request, a written  
12 or electronic list of all third parties known at the time of  
13 contracting, to which the contracting entity has or will grant access  
14 to the provider's health care services and contractual discounts  
15 pursuant to a provider network contract; and

16 (2) maintain an Internet website or other readily available  
17 mechanism, such as a toll-free telephone number, through which a  
18 provider may obtain a listing, updated at least every 90 days, of the  
19 third parties with which the contracting entity or another third party  
20 has executed contracts to grant access to the provider's health care  
21 services and contractual discounts pursuant to a provider network  
22 contract.

23 b. A contracting entity that grants to a third party access to a  
24 provider's health care services and contractual discounts pursuant to  
25 a provider network contract shall, at the time that access is provided  
26 to the third party:

27 (1) provide the third party with sufficient information regarding  
28 the provider network contract to enable the third party to comply  
29 with all relevant terms, limitations, and conditions of the provider  
30 network contract; and

31 (2) require that the third party identify the contracting entity that  
32 is the source of the contractual discount taken by the third party on  
33 each remittance advice or explanation of payment furnished to a  
34 provider when the discount is pursuant to the contracting entity's  
35 provider network contract.

36

37 8. a. A contracting entity that grants to a third party access to a  
38 provider's health care services and contractual discounts pursuant to  
39 a provider network contract shall, in situations in which the  
40 provider network contract is terminated:

41 (1) provide notice to the third party of the termination of the  
42 provider network contract no later than 60 days prior to the  
43 effective date of the termination of the provider network contract,  
44 which notice may be provided through any reasonable means,  
45 including but not limited to, written notice, electronic  
46 communication, or an update to an electronic database or other  
47 provider listing; and

1 (2) require all persons that are by contract eligible to claim the  
2 right to access a provider's discounted rates to cease claiming  
3 entitlement to those rates or other contracted rights or obligations  
4 for services rendered after termination of the provider network  
5 contract.

6 b. In situations in which a provider network contract is  
7 terminated, subject to any applicable continuity of care  
8 requirements, agreements, or contractual provisions:

9 (1) the right of a third party to access a provider's health care  
10 services and contractual discounts pursuant to a provider network  
11 contract shall terminate on the termination date of the provider  
12 network contract;

13 (2) claims for health care services performed after the  
14 termination date of the provider network contract shall not be  
15 eligible for processing and payment in accordance with the terms of  
16 the provider network contract; and

17 (3) claims for health care services performed before the  
18 termination date of the provider network contract, but processed  
19 after the termination date, shall be eligible for processing and  
20 payment in accordance with the terms of the provider network  
21 contract.

22

23 9. a. All information made available by a contracting entity to  
24 a provider in accordance with the requirements of this act shall be  
25 confidential and the provider shall not disclose the information to  
26 any person or entity not involved in the provider's practice or the  
27 administration thereof without the prior written consent of the  
28 contracting entity.

29 b. Nothing contained in this act shall be construed to prohibit a  
30 contracting entity from requiring a provider to execute a reasonable  
31 confidentiality agreement to ensure that confidential or proprietary  
32 information disclosed by the contracting entity is not used for any  
33 purpose other than the provider's practice or the administration  
34 thereof.

35

36 10. A third party that has been granted access to a provider's  
37 health care services and contractual discounts pursuant to a provider  
38 network contract and that grants access to a subsequent third party  
39 shall comply with the requirements imposed on a contracting entity  
40 pursuant to sections 5, 6, 7, 8, and 9 of this act, as if the third party  
41 were the contracting entity.

42

43 11. a. In situations in which a third party has been granted  
44 access to a provider's health care services and contractual discounts  
45 pursuant to a provider network contract, the contracting entity and  
46 third party shall disclose, on each remittance advice or explanation

1 of payment furnished to a provider, the entity that is the source of  
2 the contractual discount.

3 b. Except as provided in subsection c. of this section, a  
4 provider shall have the right to refuse to accept a discounted  
5 amount as the appropriate reimbursement amount under a provider  
6 network contract, and the provider shall have the right to require  
7 payment of the charge with no discount applied, if:

8 (1) a remittance advice or explanation of payment furnished by  
9 a contractual entity or third party fails to comply with subsection a.  
10 of this section; or

11 (2) the contractual discount is not exercised pursuant to a  
12 network provider contract that is in compliance with the provisions  
13 of this act.

14 c. In situations in which a provider refuses to accept a  
15 discounted amount pursuant to paragraph (1) of subsection b. of this  
16 section, a provider shall notify the contracting entity or third party  
17 of the apparent violation in writing. If the contracting entity or third  
18 party, within 30 days of receipt of notice of the apparent violation,  
19 notifies the provider that the apparent violation resulted from an  
20 administrative oversight or other unintentional error and submits to  
21 the provider a corrected remittance advice or explanation of benefits  
22 with documentation demonstrating eligibility for the discount  
23 applied, the discount shall be applied and the provider shall not  
24 have a right to refuse to accept the discounted amount.  
25

26 12. a. Any person who violates any provision of this act shall be  
27 liable to a civil penalty in an amount of not less than \$500, or more  
28 than \$10,000, for each violation. A penalty shall be collected and  
29 enforced by a summary proceeding brought by the Commissioner of  
30 Banking and Insurance pursuant to the provisions of the "Penalty  
31 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

32 b. In addition to any penalty pursuant to subsection a. of this  
33 section, it shall be an unfair trade practice pursuant to the  
34 provisions of N.J.S.17B:30-1 et seq. and a violation of that act for  
35 any person to knowingly access or utilize a provider's contractual  
36 discount pursuant to a provider network contract without a  
37 contractual relationship with the provider, contracting entity, or  
38 third party.  
39

40 13. The Commissioner of Banking and Insurance shall, pursuant  
41 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
42 1 et seq.), adopt rules and regulations necessary to effectuate the  
43 purpose of this act.  
44

45 14. This act shall take effect on the 90th day following  
46 enactment and shall apply to all provider network contracts that are

1 delivered, issued, executed or renewed in this State, on or after the  
2 effective date.

3

4

STATEMENT

5

6 This bill establishes requirements for granting access to  
7 physician discounts under a provider network contract, in order to  
8 prevent the improper selling or leasing of these contractual  
9 discounts, under what is commonly known as a “silent PPO  
10 (preferred provider organization)” arrangement.

11 The bill imposes a registration requirement on contracting  
12 entities as defined in the bill, and allows them to grant to third  
13 parties access to the network discounts that they have negotiated  
14 with physicians and certain other health care providers, only under  
15 certain circumstances and with certain disclosures.

16 The bill requires any person that is conducting business as a  
17 contracting entity in this State on the bill’s effective date to register  
18 with the Department of Banking and Insurance within 90 days of  
19 the effective date unless the person is licensed by the department as  
20 an insurer. Any person that commences business as a contracting  
21 entity in this State on or after the effective date shall register with  
22 the department within 30 days of commencing business unless the  
23 person is licensed by the department as an insurer. The bill provides  
24 certain specific registration requirements.

25 The bill allows contracting entities to grant access to a provider  
26 network contract only to certain types of third parties, and only in  
27 situations in which the provider network contract specifically  
28 allows such access and the third party accessing the provider  
29 network contract is contractually obligated to comply with all  
30 applicable terms, limitations, and conditions of the provider  
31 network contract.

32 A contracting entity that grants to a third party access to a  
33 provider’s health care services and contractual discounts pursuant to  
34 a network provider contract, shall, at the time a provider network  
35 contract is entered into with a provider, provide certain information  
36 as to the third parties that have or will have access to the services  
37 and discounts, and also maintain a website or other means to  
38 provide an updated listing of third parties with access.

39 A contracting entity that grants to a third party access to a  
40 provider’s health care services and contractual discounts pursuant to  
41 a provider network contract shall, at the time that access is provided  
42 to the third party: (1) provide the third party with sufficient  
43 information regarding the provider network contract to enable the  
44 third party to comply with all relevant terms, limitations, and  
45 conditions of the provider network contract; and (2) require that the  
46 third party identify the contracting entity that is the source of the

1 contractual discount taken by the third party on each remittance  
2 advice or explanation of payment furnished to a provider.

3 The bill provides that a contracting entity that grants to a third  
4 party access to a provider's health care services and contractual  
5 discounts pursuant to a provider network contract shall, in situations  
6 in which the provider network contract is terminated, provide  
7 certain notices to the third party of the termination of the provider  
8 network, and require all persons that are by contract eligible to  
9 claim the right to access a provider's discounted rates to cease  
10 claiming entitlement to those rates or other contracted rights or  
11 obligations for services rendered after termination of the provider  
12 network contract.

13 The bill also provides, in situations in which a provider network  
14 contract is terminated, subject to any applicable continuity of care  
15 requirements, agreements, or contractual provisions, that the right  
16 of a third party to access a provider's health care services and  
17 contractual discounts shall terminate on the termination date of the  
18 provider network contract. The bill also addresses, with respect to  
19 the date of termination, which claims remain eligible for processing  
20 and payment in accordance with the terms of the contract.

21 The bill also provides certain confidentiality requirements as to  
22 information made available, pursuant to the bill, by a contracting  
23 entity to a provider. Certain of the bill's provisions also apply to  
24 third parties that provide access to a provider's health care services  
25 and contractual discounts to a subsequent third party.

26 In situations in which a third party has been granted access to a  
27 provider's health care services and contractual discounts pursuant to  
28 a provider network contract, the contracting entity and third party  
29 shall disclose, on each remittance advice or explanation of payment  
30 furnished to a provider, the entity that is the source of the  
31 contractual discount. Under certain circumstances, the provider may  
32 refuse to accept a discounted amount as the appropriate  
33 reimbursement amount under a provider network contract, and the  
34 provider shall have the right to require payment of the charge with  
35 no discount applied.

36 Any person who violates any of the bill's provisions shall be  
37 liable to a civil penalty in an amount of not less than \$500, or more  
38 than \$10,000, for each violation, which may be collected by a  
39 summary proceeding. In addition, it shall be an unfair trade practice  
40 pursuant to the provisions of N.J.S.17B:30-1 et seq., and a violation  
41 of that act for any person to knowingly access or utilize a provider's  
42 contractual discount pursuant to a provider network contract  
43 without a contractual relationship with the provider, contracting  
44 entity, or third party.

45 The Commissioner of Banking and Insurance shall adopt,  
46 pursuant to the "Administrative Procedure Act," P.L.1968, c.410

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- 1 (C.52:14B-1 et seq.), rules and regulations necessary to effectuate
- 2 the provisions of the bill.